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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,125	07/21/2003	Gloria Falla	P1087USU	8031
7590	07/27/2005		EXAMINER	
Charles N. J. Ruggiero, Esq. Ohlandt, Greeley, Ruggiero & Perle, L.L.P. 10th Floor One Landmark Square Stamford, CT 06901-2682			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 07/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,125

Applicant(s)

FALLA, GLORIA

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5-19-05 *Reconsideration*.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Mellinger (US 3,934,593).

Mellinger discloses a molded breast pad for a strapless adhesive brassiere comprising one or more first layers (18) formed of a first material which has a first loft and one or more layers (20) formed from a second material having a second loft (best seen in figure 2) wherein the molded breast pad is molded such that a portion thereof (at 10) is compressed so that the first loft and the second loft are substantially the same (as seen in figure 2 at the bottom at 10). (See Mellinger, col. 1, line 44 – col. 2, line 24). Mellinger discloses the one or more first layers (18) situated intermediate at least two of the one or more second layers (20) as seen in figure 2. The material (18) of Mellinger is a woven or knitted fabric and has elastomeric properties that differ from the first material in that they are less elastomeric . Mellinger also discloses the flexibility as being changed by manipulating the loft as claimed. (See Mellinger, col. 1, lines 54 –64). The compressed portion (at 10 as seen in figure 2) has different elastomeric properties (in that they are stiffer) than the remaining portion of the molded breast pad. (See Mellinger, col. 1 ,lines 54 –64). The molded breast pad of Mellinger includes a line of

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demarcation (at 24) separating the compressed portion from the rest of the breast pad. (See Mellinger, col. 2, line 11 and figure 3). The line of demarcation is formed on a body contacting surface of the pad so that the opposing surface of the breast pad is substantially smooth. The inner side at the demarcation line (24) is an edge which goes under the breast of the wearer when worn and the opposite outer side is a curved concave portion as seen in figure 3. the molded breast pads of Mellinger form a strapless adhesive bra when worn in pairs. Mellinger discloses a method of forming a breast pad including providing a material block of one or more first layers 18 and one or more second layers 20 of a second material each having different lofts that are adhesively connected and then molded to form 3-dimensional breast pads with a portion thereof (at 10, as seen at the bottom of figure 2) which has a reduced loft and with a distinct elastomeric properties (stiffer) than the remaining 3-dimensional breast pad. Mellinger also includes a line of demarcation (at 24; see col. 2, line 11 and figure 3) that separates the reduced loft area from the rest of the breast pad. (See col. 1, line 44 – col. 2, line 24 and figures 1-3).

Response to Arguments

Applicant's arguments filed 5-19-05 have been fully considered but they are not persuasive. In regard to claims 1-20 Applicant is arguing more than what has been claimed. Applicant is arguing that the pad is only the center part of the Mellinger pad. However, the pad of Mellinger is the entire pad that has been molded. The border portion is part of the molded breast pad. The two pads together form a garment. The foam 18 has inherent elastomeric properties. It is well known to those of ordinary skill in

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the art that foam has elastomeric properties in addition to tricot knitted materials which are also considered elastomeric as broadly claimed. The compression manipulation will change the inherent elastomeric properties. The materials themselves have inherent elastomeric properties and when used in the device in the same form those properties will remain. The compressed areas will change. The border is the compressed portion. Applicant is ignoring that the border is part of the breast pad. The demarcation line is on the body side and the front side and curve smoothly along the body when it is placed on the body. In conclusion, applicant is arguing more than what has been claimed. Also applicant is ignoring portions of the Mellinger pad as not being part of the molded breast pad. The entire structure of the Mellinger pad is the molded breast pad and wherein two pads form a garment or strapless brassiere.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gloria Hale
Primary Examiner
Art Unit 3765
